

The 25th June, 1981

No. 9(1)81-8Lab./6885.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Parkash Tubes Ltd., Parkash Nagar, Bahadurgarh.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL,
TRIBUNAL, HARYANA, FARIDABAD

Complaint No. 3 of 1979

Between

SHRI OBRI COMPLAINANT WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. PARKASH TUBES LIMITED, PARKASH NAGAR,
BAHADURGARH

Presents.—

Shri S.R. Gupta for the workman.
Shri C.K. Agarwal for the management.

AWARD

This is a complaint under section 33-A of the I.D. Act. It was filed by Shri Obri the complainant against the respondent. Notice of the complainant was sent to the respondent management, who filed reply. Rejoinder was also filed by the complainant and following issues were framed on 15th November, 1979:—

1. Whether any Industrial Dispute was pending at the time of termination of services of the complainant?
2. Whether the management has contravened the provisions of section 33?
3. Whether the workman left the services of the management of his own and abandoned his job voluntarily?
4. Whether the termination of services of the workman was justified and in order?
5. Relief?

And the case was fixed for the evidence of the workman. Issue No. 1 was decided by my order dated 4th November, 1980 in favour of the workman and evidence of the parties was recorded thereafter on other issues. The opposite party examined Shri Ami Chand Sharma, Factory Manager, as M.W.-1 and the complainant examined himself as W.W.-1. Arguments were heard. I now give my finding issueswise:—

Issues No. 2, 3 and 4.—These issues are inter linked, therefore, taken up together. Briefly stated the facts are that the complainant was in the employment from 1974. He represented workman before the management. He was chargesheeted and suspended by the management and a domestic enquiry was ordered against him. Many letters were exchanged between the workman and the Enquiry Officer and the management but the enquiry was not completed. Finally the management issued letter revoking the suspension order asking the complainant to join his duty. This letter was sent by UPC but the workman did not report for duty and thereby the management struck off his name. The version of the complainant was that the opposite party never informed him, nor the Enquiry Officer about the revocation

of his suspension, although he was all along in correspondence with them. Thus on the one hand the complainant's case is of victimization and termination of his service by a deceitful manner where as the opposite party termed it as abandonment on the part of the complainant. The complainant placed on record documents, Exhibit W-1 to W-54. The management filed documents, Exhibit M-1 to M-10. Exhibit M-1 is a settlement dated 18th April, 1978 under section 12(3) of the I.D. Act. The complainant was one of the signatories to the settlement as one of the representative of the workmen. He was also a signatory of the demand notice. Exhibit W-3 was charge-sheeted in which the allegations of inciting the workmen to go on strike and refusal to receive order of suspension were levelled against him. He was informed of the domestic enquiry,—vide letter, Exhibit W-5. A second charge-sheet Exhibit W-4 was issued to him and letters, Exhibit W-27 to W-53 were from the management or the Enquiry Officer or the workman written to one another. The most controversial letter is Exhibit M-7. It is dated 25th January, 1979 in which it is written to the workman that the management was informed by the Enquiry Officer about completion of enquiry proceedings and also that the enquiry report will be submitted to the management in short time. In the second para it is written that the management reserved its right to take action according to Standing Orders of the company on the finding of the enquiry and revoke suspension order and asked the workman to report for duty. This letter was sent to the complainant,—vide UPC receipt Exhibit M-8 which is from Bahadurgarh post office and stamp date is 25th January, 1979. Again a letter Exhibit M-10 in the form of a reminder of letter dated 25th January, 1979 was written to the workman on 5th February, 1979. It was also sent under UPC. from Bahadurgarh post office stamp being 5th February, 1979,—vide Exhibit M-12.

The learned representative for the complainant argued that letter Exhibit M-7 and M 10 were forged documents and Exhibit M-8 and M-12 were procured by the opposite party. No such letters were ever posted. He also contended that letter dated 1st February, 1979, Exhibit W-22 was received by registered A.D. from the Enquiry Officer in which the workman was informed about the completion of the domestic enquiry because the workman did not avail opportunities to produce his defence but there was no mention of revocation of suspension in this letter. I do not find any force in this contention because the Enquiry Officer may not be aware of the decision of the management and wrote to the complainant confining himself about the enquiry only. The learned representative for the workman cited 1977 Supreme Court Cases (L&S) page 20, 1980 Lab. I.C. page 267, 1980 I LLJ page 137 and 1979 I LLJ page 257.

The learned representative for the management argued that the suspension of the workman was revoked and he was asked to resume his duty. When he did not turn up a reminder was issued to him. But the workman failed to turn up even thereafter. In such a situation he argued that the workman abandoned his job and the action of the management was according to the Certified Standing Orders in striking off the name of the workman. He cited 1968 I SCR 54 and 1981 II LLN page 314.

After going through the statements of witnesses and documents produced by the parties I find that the complainant represented the grievances of the workmen before the management. His name and signaturss appear on demand notice, Exhibit M-15, and settlement, Exhibit M-1. It leads me to the conclusion that he was a trade unionist and leading other workmen. According to letter Exhibit W-22 from the Enquiry officer I find that the enquiry in the chargesheet dated 21st August, 1978 and 6th September, 1978 had been concluded by the Enquiry Officer. The management without waiting for the enquiry report issued letter, Exhibit M-7 on 25th January, 1979 to the workman revoking his suspension and asking him to resume duty. A reminder, Exhibit M-10 dated 5th February, 1979 and again dated 13th February, 1979 Exhibit M-9 was issued. In the last letter the workman was asked to resume duty within three days otherwise it will be presumed that he was no longer interested in the job. There is a controversy about letter, Exhibit M-7, M-9 and M-10 as these were sent by UPC and did not reach the hand of the complainant. All other letters to the complainant were sent by the management by registered post and covers, Exhibit W-5,

to W-10, W-12, W-14, W-16 to W-21 were placed on the file by the workman to show the abnormality in despatch of above letters under UPC. There was only one previous letter by cover Exhibit W-11 under UPC which the complaint placed on file. The argument of the learned representative for the workman that the action of the management tantamounts to victimisation and is a camouflage of action of the termination by showing it as absence. In fact the complainant was under suspension and had been eager throughout to join his duty. He cited 1979 ILLJ page 257 (S.C.) in which it is held as under—

“Abandonment or relinquishment of service is always a question of intention and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

He also cited 1980 ILLJ page 137 (C.S.) in para 54 of the judgement their Lordships of the Supreme Court have ruled as under :—

“Master and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If thus, scrutinised, the order has a punitive flavour in course or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used”.

On the point of the jurisdiction of the Tribunal he cited 1977 Supreme Court Cases (L&S) page 20 in which it is held :—

“There is no dispute between the parties in this appeal that there was an industrial dispute pending before the tribunal in which the workman was concerned and that the particular termination had nothing to do with that dispute. The only point on which the parties differ is as to the nature of the order of termination of service. The employer claims it to be a termination simpliciter in exercise of its right under a written contract of service entered between the parties. The workman on the other hand contends that termination of his service was meted out as a punishment for avenging the defeat of the employer in an earlier litigation under section 33-A at the instance of the workman, and is in the nature of dismissal for misconduct”.

And it is further held as under :—

“The tribunal was not debarred from going into the question whether, notwithstanding the form of the order, in substance, it is an action of dismissal for misconduct and not termination simpliciter. It was open to the tribunal to pierce the veil of the order and have a close look at all the

circumstances and come to a decision whether the order was passed on account of certain misconduct. The employer cannot get away by merely describing the termination as simple in his letter of discharge".

The learned representative for the management cited 1981 LLR page 20 in which it is held that when a letter is sent under postal certificate but then it must have reached its destination but when there is a denial on oath that the service was not so effected the presumption is rebuttable. It does not have the same presumption which is to a registered letter (AIR 1955 NUC 1968).

Under the above circumstances it is a patent fact that the workman had never shown an intention to abandon the job rather he was all along pressing the management to vacate his order of suspension and hold enquiry according to law. He had time and again emphasised upon the management that he was being victimised. I see a colourable exercise of jurisdiction by the management in issuing letter Exhibit M-7, M-9 and M-10.

As I had decided issue No. 1 against the management, therefore, it was incumbent upon the management to seek approval of the action of dismissal passed against the workman. There is a contravention of section 33 of the Industrial Disputes Act.

As discussed above the termination of services of the workman was neither justified nor in order.

I, therefore, give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated 25th May, 1981.

M. C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 523, dated 29th May, 1981.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

The 28th August, 1981

No. 9(1)81-8Lab/9553.- In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Gaj Raj Nagar Tractor Contractor, M/s Eiche Limited, Faridabad and (ii) M/s Eicher Ltd. Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 187 of 1981

between

THE WORKMAN AND THE MANAGEMENT OF M/S GAJ RAJ NAGAR TRACTOR
CONTRACTOR M/S EICHER LIMITED FARIDABAD AND (ii) M/S EICHER LTD,
FARIDABAD

Present :—

None for the workman.

None for the Management.

AWARD

By order No. ID/ED/57/81/2954, dated 12th June, 1981 the Governor of Haryana referred the following disputes between the management of M/s. Gaj Raj Naga Tractor Contractor M/s. Eicher Limited, Faridabad and (ii) M/s. Eicher Limited Faridabad and its workmen, to this Tribunal for adjudication. In exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947. —

1. Whether the tractor drivers should be insured under general Insurance Policy? If so, with what details?
2. Whether the tractor drivers should be paid driving allowance? If so, with what details?
3. Whether the tractor drivers are entitled to the grant of return journey fare? If so, with what details?
4. Whether the tractor drivers should be paid daily allowance in case of delay in tractor delivery? If so, with what details?
5. Whether the tractor drivers who fell sick during the transit period should be compensated towards medical expenses? If so, with what details?
6. Whether the tractor drivers should be suitably compensated when the tractors are sent by towing another tractor? If so, with what details?

On receipt of the order of reference, notices were issued to the parties. The Process server made a report that both the parties refused to take the summons and the case was ordered to be dismissed in default.

I, therefore, dismiss the case in default of the parties.

Dated, the 10th August, 1981.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

Endorsement No. 747, dated the 12th August, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

The 3rd September, 1981

No. 9(D-31-8L/9714.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court Faridabad in respect of the dispute between the workman and the management of M/s. (i) The Chairman, The Ratauli Co-operative Credit and Service Society Ltd., Kheda Farms (Tehsil Jagadhri), (ii) The Chairman, The Ambala Co-operative Bank, Ambala City:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 464 of 1980

between

SHRI JOGINDER SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S (i) THE CHAIRMAN, THE RATAULI CO-OPERATIVE CREDIT AND SERVICE SOCIETY LTD., KHEDA FARMS TEHSIL JAGADHRI, (ii) THE CHAIRMAN, THE AMBALA CENTRAL CO-OPERATIVE BANK LTD., AMBALA CITY

Present:—

Workman in person with Shri Madhu Sudhan Sharan.
Shri K. K. Abrol, for the respondent management No. I.
Shri Prem Nagar Inspector for the respondent management No. II.

AWARD

This reference No. 454 of 1980 has been referred to this court by the Hon'ble Governor of Haryana, vide his order No. IDY IN/58-80/51114, dated 29th September, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Joginder Singh, workman and the respondent management of M/s (i) The Chairman, The Ratauli Co-operative Credit and Service Society Ltd., Khela Farms, Tehsil Jagadhri, (ii) The Chairman, The Ambala Central Co-operative Bank Ltd., Ambala City. The term of reference was :—

Whether the termination of services of Shri Joginder Singh was justified and in order? If not, to what relief is he entitled?

After receiving this reference notices were sent to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed on 15th December, 1980 :—

1. Whether it is a case of voluntary abandonment of service by the workman as he absented himself from service for more than stipulated period? OPM
2. Whether the termination of services of the workman is proper, justified and in order? If so, to what relief is he entitled?
3. Whether the reference is bad for non-joinder of party?
4. Relief?

The case of the petitioner according to his demand notice, dated 8th June, 1980, claim statement, dated 12th October, 1980 is that the workman joined the service of the respondent for the last so many years as Salesman and as permanent employee and his service was terminated on 6th May, 1980 without assigning any reason or notice to the workman. The workman has prayed for his reinstatement with continuity of service and full back wages.

On the other hand the case of the respondent according to the written statement is that the respondent society has never terminated the services of the workman and it was the applicant who has absented himself from the services of the Society since 13th May, 1980. So the reference may be dismissed. The respondent management produce Shri Biram Singh, Administrative Officer, respondent No. I Society and Prem Sagar Inspector, respondent No. II, Bank as MW-1 and MW-2 and closed their case.

From the side of the workman he himself appeared as his own witness as WW-1. In his statement he stated that he joined the service of the respondent on 13th February, 1978 as Salesman at a salary of Rs 250 P.M. His service was terminated without any reason or notice which was illegal and against the principle of natural justice. He also produced Ex. W-1 in his support and the case was closed by him.

My findings are as under :—

According to the workman he was workman as a Salesman in respondent No. I Society for many years at a salary of Rs 250 P.M. He was appointed by the Society respondent No. I. He made respondent No. II the Bank a party because the bank is the principle controlling body of the respondent No. I the Society. On 6th May, 1980 through Ex. W-1 the workman was ordered to be dismissed by one Roop Chand, Executive Officer C.B., Jagadhri, who was not authorised to issue such orders as he was neither the appointing authority nor had any such authority.

Both the respondents, i.e., the Society and the Bank in their written statements and oral evidence led by them have supported the contention of the workman Joginder Singh. They say that they never terminated the services of this workman, rather he was removed by a person who had no such authority vesting in him.

In these circumstances and not discussing the above case which is very fool proof and I hold that the termination of workman Joginder Singh is quite illegal, unjustified and not in order. He should be immediately reinstated with continuity of service and he should be given full back wages along with all benefits. This be read in answer of this reference. No order as to costs.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Dated the 11th August, 1981.

Endorsement No. 2559, dated 17th August, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Delhi, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledge within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.